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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/733,649	12/11/2003	Andrew Christopher Wright	DSGI-1000US0	2170
69721	7590	06/08/2007		
ALBERTO Q. AMATONG, JR. P.O. BOX 70889 HOUSTON, TX 77270-0889			EXAMINER BOGART, MICHAEL G	
			ART UNIT 3761	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/733,649	Applicant(s) WRIGHT ET AL.	
	Examiner Michael G. Bogart	Art Unit 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 March 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 and 28-61 is/are pending in the application.
- 4a) Of the above claim(s) 1-12 and 34-48 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 28-33 and 49-61 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input checked="" type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. <u>20070525</u> . |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>02 August 2004</u> . | 6) <input type="checkbox"/> Other: _____. |

DETAILED ACTION

Claim Objections

Claim 28 is objected to because of the following informalities:

In claim 28, in the second to the last line, after “first”, replace “elasticized” with --non-elasticized--. Appropriate correction is required.

Claim Interpretation

The interpretation of the claims is based in part upon a telephone interview with Alberto Amatong on 25 May 2007 to clarify the dependency of claims 49-52. It is noted that the claims have NOT been amended in response to that interview as the application has not been allowed.

Claim 49 is interpreted as follows:

In a disposable absorbent garment, an elastic composite comprising:

a base layer;

a top layer; and

an elastic construction disposed therebetween, said elastic construction including a plurality of spaced apart elastic elements aligned in generally parallel relation;

wherein said top and base layers define a first side edge and a second side edge and a longitudinal centerline extending between said side edges, said elastic construction being disposed between said top and base layers and extending between said side edges in a direction generally parallel with or corresponding to said longitudinal centerline; and

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wherein each said elastic element is oriented along a direction intersecting said longitudinal centerline and said side edges.; and

wherein at least a plurality of successive elastic elements in said arrangement are a discrete severed section of one elasticized strand.

Claims 50-52 are each interpreted as depending from claim 49.

Claim Rejections – 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. § 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 49, 54 and 57 are rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Claims 49, 54 and 57 recite the limitation: “wherein at least a plurality of successive elastic elements in said arrangement are a discrete severed section of one elasticized strand.”

There is no support for this limitation in the specification or drawings.

Claim Rejections – 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 28-31, 53, 55 and 56 are rejected under 35 U.S.C. § 102(e) as being anticipated by Toyoshima *et al.* (US 2004/0243090 A1; hereinafter: “Toyoshima”).

Regarding claim 28, Toyoshima teaches an disposable absorbent garment (1), comprising:

a topsheet (2);

a backsheet (3);

an absorbent core (4) disposed between said topsheet (2) and said backsheet (3), wherein a longitudinal center line extends through said topsheet (2), backsheet (3), and absorbent core (4), and wherein said topsheet (2) and said backsheet (3) define a front end edge (11) and a back end edge (12) through which said longitudinal centerline extends and a pair of side margins disposed on opposite sides of said core (4) and extending between said end edges (11, 12), wherein said topsheet (2) , backsheet (3), and absorbent core (3), at least partly, form a central body; and

a pair of waist fastening portions (5, 8) disposed on opposite sides of said longitudinal centerline and in proximity with one of said side margins and attached to said central body in proximity to said side margins, each said waist fastening portion (5, 8) having a first side edge, a second side edge, and a fastening portion centerline extending between said side edges that corresponds with a machine direction of said fastening portion, each said fastening portion (5, 8) including a base layer, a top layer, and an elastic construction (81) disposed between said top and

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base layers and spaced inwardly from each said side edge, said elastic construction (81) including a plurality of spaced apart and disconnected elastic elements (81) distributed in a direction between said side edges and in generally perpendicular relation with said fastening portion centerline wherein each fastening portion further includes,

an elasticized region (8) positioned between said first and second side edges, said elastic construction (81) being disposed in said elasticized region (8),

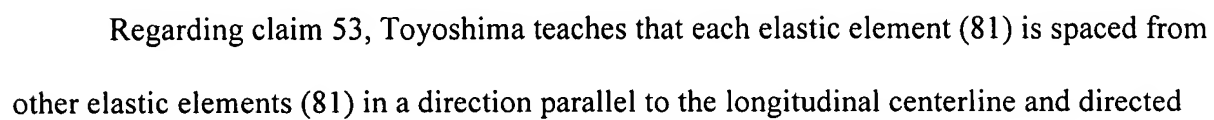
a first non-elasticized region positioned between said first side edge and said elasticized region (8), and

a second non-elasticized region positioned between said second side edge and said elasticized region (8), and

wherein said elastic elements (8) are spaced from said first side edge and from said central body to position the first non-elasticized region between said elasticized region and said central body (paragraphs 0030; 0032-0034; 0051; 0066, 0067)(see annotated figure 2, infra).

Regarding the non-elasticized regions, Toyoshima teaches that the elastic members (81) are not disposed between the side edges (41) of the absorbent core (4)(paragraph 0033).

Additionally, the reference teaches that the elastic members are disposed between the two basal parts (52)(paragraph 0034). Like the waist elastic member (71), they do not extend to the second side edge.



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laterally toward the side edges such that they only impart tension to the lateral direction (figure 2, supra).

Regarding claim 55, Toyoshima teaches said top layer and said base layer (paragraph 0033).

Regarding claim 56, Toyoshima teaches that the elastic region (8) extends substantially continuously and longitudinally between the side edges (see figure 2).

Claim Rejections – 35 USC § 102/103

The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. § 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. § 103(c) and potential 35 U.S.C. § 102(e), (f) or (g) prior art under 35 U.S.C. § 103(a).

Claims 49-52, 54 and 57-61 are rejected under 35 U.S.C. § 102(e) as anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as obvious over Toyoshima.

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Regarding claims 49, 54 and 57, Toyoshima teaches that each elastic element (81) is oriented along a direction intersecting the longitudinal centerline and side edges; and that the elements (81) are discrete.

Regarding the limitation concerning the elements (81) each being discrete severed section of one elasticized strand, this limitation is a product-by-process limitation.

Product-by-process claims are not limited to the manipulations of the recited steps, only the structure implied by the steps.

Koyoshima's elastic elements in the finished product are identical to elastic elements that have been severed from a single elastic element.

Regarding claim 50, Toyoshima teach that each elastic element (81) is spaced from other said elastic elements (81) in a direction parallel with said composite centerline and positioned relative to said composite centerline such that each said elastic element (81) imparts a substantially lateral elasticity to said substantially continuous elasticized (8) region (see figure 2).

Regarding claim 51, Toyoshima teach that the elastic elements (81) are distributed in an arrangement having a longitudinal direction extending between said side edges from a first elastic element in the arrangement to a second elastic element in the arrangement, wherein a plurality of elastic elements (81) are positioned between the first and second elastic elements to form the substantially continuous elasticized region (8) through the longitudinal centerline of said elastic composite band.

Regarding claim 57, Toyoshima teaches that the elastic elements are aligned generally perpendicular to the composite centerline.

Regarding claim 58, Toyoshima teaches that each said elastic element (81) is spaced longitudinally from other said elastic elements (81) and directed laterally such that each said elastic elements (81) are configured to impart tension restricted to the lateral direction relative to the composite centerline (see figure 2).

Regarding claim 59, Toyoshima teaches that said elastic elements (81) are positioned adjacent one another to form a substantially continuous elasticized region (8) extending along said composite centerline.

Regarding claim 60, Toyoshima teaches that each said top layer and base layer includes a pair of side edges, and wherein said elastic elements (81) are spaced inwardly from said side edges of said top and base layers to provide a non-elasticized region between said elasticized region and said side edges (paragraphs 0033 and 0034).

Regarding claim 61, Toyoshima teaches that said elastic elements (81) are spaced from said side edges to provide a non-elasticized region between said central body and said elasticized region (8)(figure 2).

Claim Rejections – 35 USC § 103

Claims 32 and 33 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Toyoshima as applied to claims 28-31 53, 55 and 56 above, and further in view of Guevara *et al.* (US 6,086,571 A; hereinafter “Guevara”).

Toyoshima does not expressly teach that the elastic elements are adhered to one of the top and base layers.

Guevara teaches an absorbent article with an elastic tab that has top and/or base layers adhered to adhesive strands.

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At the time of the invention, it would have been obvious to one of ordinary skill in the art to use the adhesive attachment means of Guevara as the means of affixing the elastic to the substrate in the device of Toyoshima in order to provide a means that is known in the art to be suitable for that purpose.

Response to Arguments

Applicant's arguments with respect to claims 28-33 and 49-61 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Bogart whose telephone number is (571) 272-4933.

In the event the examiner is not available, the Examiner's supervisor, Tatyana Zalukaeva may be reached at phone number (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300 for formal communications. For informal communications, the direct fax to the Examiner is (571) 273-4933.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-3700.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

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system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Michael Bogart
25 May 2007

TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER

